

PROPOSED REGULATION OF THE STATE ENVIRONMENTAL COMMISSION

R119-20 – Agency Draft Version

Revised Jan 11, 2021 per LCB comments

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §1, NRS 445A.425

Section 1 of R119-20 describes the process to petition the SEC to classify certain surface waters of the state, which have exceptional or special water quality characteristics, ecological, aesthetic, recreational or historical value, as Ecological or Aesthetic Waters (EAWs).

Section 2 of R119-20 describes the antidegradation policy which would be implemented as a component of the water quality standards to maintain and protect water quality in all surface waters of the State. The different levels of antidegradation protection, referred to as a tier of protection, are described in Section 2. The tier protection level that will be applied will depend on the water quality conditions in the surface water, and whether the waterbody has been classified as an Ecological or Aesthetic Water (EAW) per Section 1.

Section 3 of R119-20 describes the antidegradation review procedures for implementation of the antidegradation policy as outlined in Section 2 of this regulation.

Section 4 to Section 14 of R119-20 describe resultant changes to Chapter 445A of NAC.

Section 1. Chapter 445A of NAC is hereby amended by adding thereto a new section to read as follows:

Extraordinary Ecological or Aesthetic Waters

1. A surface water or a portion of a surface water of the state that has unique ecological or aesthetic value may be classified as an Ecological or Aesthetic Water (EAW), based on the water having some or all of the following essential attributes:

- a. The water or a segment thereof has higher water quality conditions, unique water quality characteristic, or has ecological or aesthetic significance relative to other surface waters of the state;*
- b. The water has recreational or historical significance, scenic or wilderness value, and classification as an EAW would be beneficial to the state of Nevada;*
- c. An endangered or threatened species is associated with the water and the existing water quality is essential to the maintenance and propagation of the species, or the surface water provides critical habitat for the species; or*
- d. The waterbody has an essential character or special use that makes the water an EAW.*

2. A surface water or a segment of a surface water of the state may be nominated by any Nevadan for classification as an EAW by filing Form #1 with the Commission, per NAC 445B.886. The additional information that must accompany Form #1 to nominate a water as an EAW shall include the following:

- a. A map of the surface water of the state, including the proposed upstream and downstream boundaries.*
- b. A written statement and supporting evidence to justify the nomination including specific reference to the applicable attribute(s) for an EAW classification prescribed in subsection 1.*
- c. Water quality data and information to demonstrate higher water quality conditions, unique water quality characteristic, or important ecological, aesthetic, or recreational value.*

- d. Any additional information or data, as deemed necessary by the Division, to support designation as an EAW.
 - e. A discussion of the social and economic benefits and impacts associated with an EAW designation.
3. The following factors will be considered by the Commission during a public hearing when deciding to classify a surface water as an EAW and determining whether the EAW will be protected at Tier 3 or Tier 2.5 under the antidegradation policy in Section 2:
- a. The degree to which the surface water has the exceptional ecological or aesthetic attributes as listed in Section 1.1, inclusive,
 - b. Whether there is the ability to manage the surface water to maintain and protect the water quality conditions, special uses, or the ecological or aesthetic value of the water,
 - c. The social and economic benefits and impacts associated with an EAW classification,
 - d. The public comments in support of, or in opposition to, an EAW classification,
 - e. The consistency of an EAW classification with applicable water quality management plans and existing water-use activities, and
 - f. Preexisting land-use activities, adjacent and within the vicinity, of the nominated surface water.
4. Per NAC 445A.122, the classification of a water as an EAW shall not prohibit the use of the water as authorized under Title 48 of NRS, nor does it entitle an appropriator to require that the source meet his or her particular requirements for water quality.
5. The classification of a water as an EAW shall not prohibit or alter activities, which are authorized under a state or federal permit, related to management and maintenance of structures and devices in and on the water.
6. The following surface waters are classified as EAWs with the associated antidegradation protection level:

Surface Water Name	Region	Water Quality Standards	Antidegradation Tier Protection Level (per Section 2)	Date
Lake Tahoe (State of NV)	Truckee Region	NAC 445A.1626	Tier 3	(date approved by SEC)

Section 2. Chapter 445A of NAC is hereby amended by adding thereto a new section to read as follows:

Antidegradation Policy. The following antidegradation policy applies to all surface waters of the State. This policy must not be used to prohibit use of the water as authorized under Title 48 of NRS, nor entitle an appropriator to require that the source meet his or her particular requirements for water quality. A tier of protection, determined on a parameter-by-parameter basis, will be applied to maintain and protect existing water quality conditions.

1. **Tier 3 protection.** The higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value shall be maintained and protected in a surface water or segment thereof that has been classified as an EAW, as defined in Section 1. This tier of protection prevents activity any or new or expanded point-source discharge, as defined in Section 3.1(b), that would result in new or increased sources of pollution or water quality impacts. Any new or expanded point-source discharge upstream of the EAW will not degrade the higher quality condition, alter or negatively impact the unique water quality characteristic or important ecological,

aesthetic, or recreational value of the EAW. Tier 3 protection requirements will not apply to the following situations:

- a. Discharges of point sources authorized by the Division prior to classification as an EAW.*
 - b. The Division determines activities that may result in temporary or limited lowering of the water quality are necessary for long-term ecological or water quality benefit, or to accommodate public health and safety or other allowable discharges, as determined by the Division. Such activities shall be non-recurring and necessary controls will be implemented to minimize impacts to water quality and water quality values.*
- 2. Tier 2.5 protection. The higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value shall be maintained and protected in a surface water or segment thereof that has been classified as an EAW, as defined in Section 1, that is not subject to Tier 3 protection requirements. This tier of protection does not preclude a new or expanded point-source discharge, as defined in Section 3.1(b), where such sources would have no effect on the higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value of the EAW. Tier 2.5 protection requirements will not apply to the following situations:*
 - a. Discharge of point sources authorized by the Division prior to classification as an EAW.*
 - b. The Division determines activities that may result in temporary or limited lowering of the water quality are necessary for long-term ecological or water quality benefit, or to accommodate public health and safety or other allowable discharges, as determined by the Division. Such activities shall be non-recurring and necessary controls will be implemented to minimize impacts to water quality and water quality values.*
- 3. Tier 2 protection. Where the existing quality conditions in a surface water or segment thereof are higher than the applicable water quality standards to support the designated beneficial uses, the higher water quality shall be maintained and protected. Lowering of the existing quality in the surface water may be allowed, by the Commission, based on the following findings:*
 - a. The lower water quality allowed is necessary to accommodate economic or social benefit in the area where the surface water is located and treatment technology is not economically viable,*
 - b. Water quality will not be degraded below the applicable water quality standards that protect the designated beneficial uses,*
 - c. The lower water quality allowed will not cause or contribute to exceedance of water quality standard that has been established for a downstream surface water,*
 - d. The new or increased source of pollution will not cause further degradation of water quality when existing dischargers are not in compliance with regulatory requirements and permit conditions unless enforcement and/or permit compliance actions have been initiated to achieve compliance. The highest and best degree of pollution prevention, control and treatment available under existing technology and which is cost-effective is applied to new and existing point sources to achieve statutory and regulatory permitting requirements, and*
 - e. Cost-effective and reasonable best management practices for diffuse source pollution control that are established and required under State authority are implemented when diffuse sources contribute similar pollutants as the new or increased source of pollution.*
- 4. Tier 1 protection. The level of water quality necessary to protect and ensure a continuation of the designated beneficial uses shall be maintained in all surface waters of the state.*

Section 3. Chapter 445A of NAC is hereby amended by adding thereto a new section to read as follows:

- 1. Antidegradation Implementation Procedures: An antidegradation review analysis would need to be provided to the Division when:*
 - a. A new point-source discharge is proposed;*

- b. At the time of permit renewal or permit modification, if there is a request for an expanded point-source discharge. An expanded point-source discharge would include the following: an increased limit of flow, in gallons per day, of the discharge authorized by the permit, a change in the pollutant composition of the discharge requiring different effluent limitations, or a relocation of the discharge outfall and the relocation represents a significant change based on an evaluation by the Division; or*
- c. A new, modified or renewed zone of mixing is requested for a receiving water with parameters that have Tier 2 protection, to be evaluated at the discretion of the Division pursuant to NAC 445A.298 to NAC 445A.302, inclusive.*

2. Antidegradation review steps:

- a. The antidegradation review will be conducted on a parameter-by-parameter basis. The parameters of concern (i.e., pollutants of concern) that are expected to be present in the regulated point-source discharge must be identified.*
- b. For the identified parameters of concern, the baseline water quality for each parameter in the receiving water must be determined. Available water chemistry data used to characterize baseline water quality conditions must be of a sufficient quality and represent the chemical conditions of the receiving water upstream of the proposed discharge location.*
- c. When no baseline water quality data exist or there are insufficient data to characterize existing water quality for the identified parameters of concern, the Division may require that baseline water quality data be included with the permit application seeking to discharge to a water of the State, pursuant to NAC 445A.230. Samples used to provide baseline water quality data must be representative and statistically independent, and be collected from a location upstream of the proposed discharge. A sampling plan describing the location, schedule, and method of sampling and analysis must be approved by the Division prior to collecting baseline water quality data.*
- d. Based on characterization of baseline water quality, the appropriate antidegradation level of tier protection, pursuant to Section 2, will be assigned to each parameter of concern.*
- e. The antidegradation review analysis to be provided to the Division as part of the permit application or permit renewal will assess the probable impact of a proposed or expanded point-source discharge, as defined in 3.1(b), on the quality of the receiving water by evaluating whether the levels of discharged pollutants will meet or be better than the corresponding tier protection levels in the receiving water, as provided in Section 3.2(d).*
- f. For purposes of this Section, the term “parameter of concern” means a parameter with either a numeric or narrative water quality standard as contained in NAC 445A.121 to 445A.2234, inclusive.*
- g. For purposes of this Section, the term “baseline water quality” means the background level of each parameter in the receiving water, defined as the 95th percentile value calculated for each parameter, using chemical data from a minimum of three, statistically independent samples.*

3. Tier 3 antidegradation level

- a. The higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value at the time that a receiving water is classified as an EAW and assigned a Tier 3 antidegradation protection level, as described in Section 2, must be maintained and protected.*
- b. Existing point-source discharges as authorized by the Division at the time an EAW is approved by the Commission will be exempt from Tier 3 antidegradation protection requirements.*
- c. An activity or a new or expanded point-source discharge, as defined in Section 3.1(b), except temporary and limited discharges as listed in Section 2.1(b), that would result in a new or*

increased source of pollution or water quality impact in an EAW assigned a Tier 3 protection level is not allowed.

- d. When a new or expanded point-source discharge, as defined in 3.1(b), is proposed to a tributary water to an EAW that has been assigned Tier 3 protection, a demonstration must be made to the Division that the higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value in the downstream EAW will be maintained and protected.*

4. Tier 2.5 antidegradation level

- a. For EAWs requiring Tier 2.5 protection, as described in Section 2, higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value must be maintained and protected.*
- b. New or expanded point-source discharges, as defined in Section 3.1(b), may be authorized by the Division when the antidegradation review analysis shows that such discharges will not alter or negatively impact the higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value of the EAW.*
 - i. Where the EAW classification is based on higher water quality conditions which may include adopted RMHQs, the antidegradation review analysis will evaluate each parameter of concern in the discharge to determine whether the higher water quality conditions in the Tier 2.5 water would be maintained and protected if the proposed or expanded point-source discharge is authorized.*
 - ii. Where the EAW classification is based on a unique water quality characteristic, or important ecological, aesthetic, or recreational value, a demonstration must be made to the Division that the attributes that formed the basis of the EAW classification would be maintained and protected if the new or expanded point-source discharge is authorized.*
- c. When a new or expanded point-source discharge is proposed in a tributary water to an EAW that has been assigned Tier 2.5 protection, a demonstration must be made to the Division that the higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value in the downstream EAW will be maintained and protected.*

5. Tier 2 antidegradation level

- a. Tier 2 protection is provided for parameters of concern when the receiving water baseline water quality for the parameter is better than the applicable water quality standard, or an RMHQ has been promulgated for the parameter in the receiving water.*
- b. For each parameter of concern requiring Tier 2 protection, the antidegradation review analysis will evaluate whether the higher water quality conditions in the receiving water would be maintained and protected if the proposed or expanded point-source discharge is authorized.*
- c. A point-source discharge would not cause degradation of higher water quality conditions if the concentration of each parameter of concern in the effluent at the point of discharge was at or better than the corresponding baseline water quality condition or RMHQ value in the receiving water. No additional analysis is required, and a permit may be issued by the Division to authorize the point-source discharge.*
- d. A point-source discharge could cause degradation of higher water quality conditions if the concentration of a parameter of concern in the effluent is not better than the corresponding baseline water quality condition or RMHQ value in the receiving water. When this occurs,*

additional analysis and evaluation pursuant to Subsection 6 and 7 is required to be provided to the Division before the point-source discharge can be authorized.

- e.** *Reissuance of a permit that maintains existing permitted flow, effluent limitations and other conditions and requirements as the initial permit issuance will be viewed as not causing further degradation of water quality as determined by the Division, and will not be subject to a Tier 2 antidegradation review and evaluation, unless a zone of mixing is associated with the permit. For a receiving water with parameters that have Tier 2 protection, the zone of mixing will be evaluated during the permit renewal pursuant to NAC 445A.298 to NAC 445A.302, inclusive, and may be subject to antidegradation review analysis.*

6. Tier 1 antidegradation level

- a. Tier 1 protection is provided for a parameter of concern when the receiving water quality level for the parameter is not better than the applicable water quality standard.*
- b. Tier 1 protection ensures that the discharge does not exceed the applicable water quality standards, cause additional degradation of the receiving water, or exceed waste load allocations for waters with approved total maximum daily load (TMDL) values.*
- c. If a TMDL has been approved for the receiving water and allocations exist for the parameter of concern, the waste load allocation of the TMDL would regulate the concentration of the parameter of concern in the discharge.*
- d. If the receiving water is impaired for a parameter of concern and a TMDL has not been developed for the pollutant, the effluent permit limit for the parameter of concern will be based on the applicable water quality standard. When a TMDL is subsequently approved, the effluent limitation may be modified by the Division for cause as provided in NAC 445A.261 .*

7. Determining the Necessity of Degradation

- a. When the Tier 2 antidegradation review analysis performed under subsection 5 indicates that the proposed or expanded point-source discharge will result in degradation of water quality for a parameter of concern requiring Tier 2 protection, the project proponent or permit applicant shall provide project justification and an analysis of alternatives to the Commission for the Division to receive authorization to permit the proposed discharge.*
- b. The alternatives analysis shall address economic or social considerations and an analysis of the highest and best degree of waste treatment available under existing technology, consistent with the best practice in the particular field under the conditions applicable, and reasonably consistent with the economic capability of the project, that can reduce or eliminate the degrading aspect of the discharge. Alternative pollution-reduction strategies include, but are not limited to, different treatment techniques, different discharge locations, or process changes that would improve discharge quality.*
- c. The alternatives analysis should be comprehensive and consider amount of degradation reduced, cost-effectiveness of pollutant removal, cost of pollution reduction versus overall environmental gain and affordability of alternatives. An alternatives analysis completed as requirement of other permitting activities or environmental reviews could be used by the Division for antidegradation review purposes.*

- d. The degradation of water quality in a receiving water may be authorized by the Commission if there are no water quality control alternatives identified that would result in no degradation or less degradation or that are determined to be economically or technologically feasible.*
- 8. Before the Commission authorizes the Division to issue a permit for a proposed discharge that would cause degradation of water quality, the project proponent or permit applicant will be required to provide justification of economic and social importance of the proposed activity.*
 - a. NRS 445A.565 allows lowering of higher water quality conditions only after important economic and social benefits have been demonstrated by the applicant, and the Commission has agreed that lowering the quality of the receiving water is necessary for economic and social benefits.*
 - b. In allowing such degradation, the Commission will ensure that the level of the parameter of concern in the discharge is not greater than the water quality standard level necessary to protect designated beneficial uses adopted pursuant to NRS 445A.520.*
 - i. A project that is socially justified is one that is important to the social development of the local community in at least one aspect (e.g., population growth or job growth), or results in improvements of important community service needs (e.g., construction of new wastewater treatment plant, public water supply project, or improved transportation infrastructure).*
 - ii. An economically justified project will promote economic development of the local community.*
 - iii. A more in-depth analysis would be required to show the economic importance than a social justification and would cover how the costs associated with water quality degradation are offset by benefits to the community. A simplified cost-benefit analysis may be required.*
 - iv. A public hearing before the Commission will be required to authorize the Division to issue a permit that will result in degradation of the better water quality conditions for a parameter subject to Tier 2 protection.*
 - v. Before degradation of high water quality conditions is allowed, the Division will evaluate whether there are existing point-source compliance problems in the waterbody, and if the proposed new or expanded point-source discharge will contribute similar pollutants resulting in further degradation of water quality conditions. The proposed new or expanded point-source would not be allowed to lower quality unless it can be demonstrated that compliance measures are being developed with the appropriate regulatory authority to resolve any existing compliance problems.*
 - vi. Where diffuse source pollution is known to be contributing to lower water quality in the receiving water with respect to a parameter of concern in the new or expanded point source discharge, the Division will verify that cost-effective and reasonable best management practices (BMPs) or other strategies that are required under the Division's diffuse source pollution control program and regulations are implemented.*
- 9. Antidegradation review of general discharge permits.*
 - a. The Division shall conduct an antidegradation review of a general permit at the time the permit is issued or renewed.*
 - b. Permit conditions and requirements will be incorporated in a general permit to ensure the class of facilities covered under the general permit minimize degradation to water quality and comply with antidegradation requirements.*
 - c. A person seeking authorization to discharge under a general permit will be presumed to be meeting antidegradation requirements if they comply with all of the permit conditions and*

requirements. If the notice of intent supplied pursuant to NAC 445A.268 indicates the receiving water will be an EAW, a demonstration must be made to the Division that the higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value of the EAW will be maintained and protected. The Division may authorize the discharge to an EAW under a general permit or direct the applicant to apply for an individual permit as provided in NAC 445A.269, as necessary.

10. Antidegradation review of a municipal separate storm sewer system (MS4) stormwater permit.

- a. A permittee covered by an MS4 permit will be presumed to be meeting antidegradation requirements if the permittee complies with the permit conditions and requirements, including developing a stormwater management plan containing BMPs, as defined in NAC 445A.306, to prevent, eliminate or control the level of pollutants in stormwater discharges.*
- b. If the MS4 will discharge to an EAW, a demonstration must be made to the Division that the higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value of the EAW will be maintained and protected. .*

Section 4. NAC 445A.122 is hereby amended to read as follows:

NAC 445A.122 Standards applicable to beneficial uses. ([NRS 445A.425](#), [445A.520](#))

1. The following standards are intended to protect both existing and designated beneficial uses and must not be used to prohibit the use of the water as authorized under title 48 of NRS:

- (a) Watering of livestock. The water must be suitable for the watering of livestock without treatment.
- (b) Irrigation. The water must be suitable for irrigation without treatment.
- (c) Aquatic life. The water must be suitable as a habitat for fish and other aquatic life existing in a body of water. This does not preclude the reestablishment of other fish or aquatic life.
- (d) Recreation involving contact with the water. There must be no evidence of man-made pollution, floating debris, sludge accumulation or similar pollutants.
- (e) Recreation not involving contact with the water. The water must be free from:
 - (1) Visible floating, suspended or settled solids arising from human activities;
 - (2) Sludge banks;
 - (3) Slime infestation;
 - (4) Heavy growth of attached plants, blooms or high concentrations of plankton, discoloration or excessive acidity or alkalinity that leads to corrosion of boats and docks;
 - (5) Surfactants that foam when the water is agitated or aerated; and
 - (6) Excessive water temperatures.
- (f) Municipal or domestic supply. The water must be capable of being treated by conventional methods of water treatment in order to comply with Nevada's drinking water standards.
- (g) Industrial supply. The water must be treatable to provide a quality of water which is suitable for the intended use.
- (h) Propagation of wildlife. The water must be suitable for the propagation of wildlife and waterfowl without treatment.
- (i) Waters of extraordinary ecological or aesthetic value. The unique ecological or aesthetic value of the water must be maintained, *pursuant to Section 1.*
- (j) Enhancement of water quality. The water must support natural enhancement or improvement of water quality in any water which is downstream.

2. This section does not entitle an appropriator to require that the source meet his or her particular requirements for water quality.

Section 5. NAC 445A.123 is hereby amended to read as follows:

NAC 445A.123 Classification and reclassification of waters. ([NRS 445A.425](#), [445A.520](#))

1. Stream standards and classifications in [NAC 445A.123](#) to [445A.2234](#), inclusive, do not preclude the Commission from establishing standards and classifications for additional public waters nor reclassifying the waters covered by those sections.

2. The Commission will consider classification of a body of public water not contained in [NAC 445A.123](#) to [445A.2234](#), inclusive, upon a request for a permit to discharge into that body of water.

3. The above sections also include the classification and reclassification by the Commission of a body of public water as an Ecological or Aesthetic Water (EAW), pursuant to Section 1.

Section 6. NAC 445A.228 is hereby amended to read as follows:

NAC 445A.228 Requirement; exemptions. ([NRS 445A.425](#), [445A.465](#))

1. Except as otherwise provided in subsection 2, a person shall not discharge a pollutant from a point source into any waters of the State without obtaining a permit from the Department. *An antidegradation review analysis, pursuant to Section 3, of the point source discharge will be required prior to a permit being issued.*

2. Although not exempted from complying with all other applicable laws, rules and regulations regarding pollution, the following are specifically exempted from the requirements to obtain a permit:

(a) Persons utilizing an individual sewage disposal system or other sewage disposal system that uses a soil absorption system for the treatment and disposal of domestic wastes, if the system is approved and is installed, operated and maintained in accordance with the rules and regulations and other requirements of the district health departments, the State Board of Health or the Division or other administrative authority, as authorized by [NAC 445A.950](#) to [445A.9706](#), inclusive, as applicable. This exemption does not preclude the possibility that health authorities, the Division or other administrative authority will require permits.

(b) Except as otherwise provided in this paragraph, persons discharging pollutants into a publicly owned or privately owned sewerage system, if the owner of such sewerage system has a valid permit from the Department. In such cases, the owner of the sewerage system assumes ultimate responsibility for controlling and treating the pollutants which he or she allows to be discharged into the system. The Department may require an industrial user who discharges pollutants into a publicly owned treatment works which does not have an approved pretreatment program to obtain a permit pursuant to [NAC 445A.257](#).

(c) Discharges of pollutants from agricultural and silvicultural activities, including, without limitation, irrigation return flow and runoff from orchards, cultivated crops, pastures, rangelands and forest lands, except that this exemption does not apply to the following:

(1) Discharges from facilities in which crops, vegetation, forage growth or postharvest residues are not sustained in the normal growing season and that confine animals if the facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, any of the following types of animals at or in excess of the number listed for each type of animal:

(I) Cattle, veal calves or a pair consisting of a cow and a calf, 1,000;

(II) Mature dairy cattle (whether milkers or dry cows), 700;

(III) Swine weighing over 55 pounds, 2,500;

(IV) Swine weighing 55 pounds or less, 10,000;

(V) Horses, 500;

(VI) Sheep or lambs, 10,000;

(VII) Turkeys, 55,000;

(VIII) Chickens, if the animal confinement facility has a liquid manure handling system, 30,000;

(IX) Chickens, other than laying hens, if the animal confinement facility does not have a liquid manure handling system, 125,000;

(X) Laying hens, if the animal confinement facility does not have a liquid manure handling system, 82,000;

(XI) Ducks, if the animal confinement facility has a liquid manure handling system, 5,000; or

(XII) Ducks, if the animal confinement facility does not have a liquid manure handling system, 30,000.

(2) Discharges from production facilities for aquatic animals.

(3) Discharges of irrigation return flow, such as tailwater, tile drainage, surfaced groundwater flow or bypass water, operated by public or private organizations or natural persons if the source of water is effluent from a treatment works.

(4) Discharges from any agricultural or silvicultural activity which have been identified by the Administrator or the Director as a significant contributor of pollution.

Section 7. NAC 445A.230 is hereby amended to read as follows:

NAC 445A.230 Application for permit. ([NRS 445A.425](#), [445A.465](#))

1. Except as otherwise provided in subsection 2, any person wishing to commence future discharges of pollutants must file a complete permit application on forms provided by the Department, not less than 180 days in advance of the date on which the person desires to commence the discharge of pollutants, unless the Department has granted permission for a later date.

2. The owner of a facility described in subparagraph (4) of paragraph (c) of subsection 2 of [NAC 445A.228](#) must file a complete permit application on forms provided by the Department not later than 90 days

after receiving notification of having been identified by the Administrator or the Director as a significant contributor of pollution.

3. The Director:

(a) May require the submission of additional information after a permit application has been filed; and
(b) Shall ensure that if a permit application is incomplete or otherwise deficient, processing of the application is not completed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency.

(c) May require that baseline water quality data be included with the permit application to adequately characterize existing water quality of the receiving water and allow for an antidegradation review analysis to be completed, pursuant to Section 3.

4. If, upon review of an application, the Department determines that a permit is not required, the Department shall notify the applicant in writing of this determination. The notification constitutes final action by the Department on the application.

Section 8. NAC 445A.233 is hereby amended to read as follows:

NAC 445A.233 Determination of application prior to public notice.

1. The Department shall formulate and prepare tentative determinations regarding permit applications in advance of public notice of the proposed issuance or denial of the permit. The tentative determinations must include at least the following:

(a) A proposed determination to issue or deny a permit for the discharge described in the application; and
(b) If the determination proposed in paragraph (a) is to issue the permit, the following additional tentative determinations must be made:

(1) The proposed effluent limitations, identified pursuant to [NAC 445A.243](#), for those pollutants proposed to be limited;

(2) A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations, identified pursuant to [NAC 445A.244](#); ~~and~~

(3) A brief description of any other proposed special conditions, apart from those required in [NAC 445A.229](#), [445A.243](#), [445A.244](#), [445A.245](#), [445A.247](#), [445A.256](#) to [445A.259](#), inclusive, and [445A.262](#), which will have a significant impact upon the discharge described in the application; *and*

(4) The antidegradation review findings developed in accordance with Section 3 and the determination of the Commission where lowering of higher water quality conditions in a receiving water is proposed.

2. The Director shall organize the tentative determinations prepared pursuant to subsection 1 into a draft permit.

Section 9. NAC 445A.236 is hereby amended to read as follows:

NAC 445A.236 Fact sheets. ([NRS 445A.425](#), [445A.465](#))

1. For every discharge for which public notice was required pursuant to [NAC 445A.234](#), the Director shall prepare and, following the public notice, shall send upon request to any person a fact sheet with respect to the application described in the public notice. The contents of such fact sheets must include at least the following information:

(a) A sketch or detailed description of the location of the discharge described in the application;
(b) A quantitative description of the discharge described in the application which includes at least the following:

(1) The rate or frequency of the proposed discharge and, if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;

(2) For thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit; and

(3) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under § 301, 302, 306 or 307 of the Act, 33 U.S.C. § 1311, 1312, 1316 or 1317, and regulations published thereunder;

(c) The tentative determinations required under [NAC 445A.233](#);

(d) A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards and limitations applied to the proposed discharge; and

(e) A fuller description of the procedures for the formulation of final determinations than that given in the public notice including:

(1) The 30-day comment period required by subsection 3 of [NAC 445A.234](#);

(2) Procedures for requesting a public hearing and the nature thereof; and

(3) Any other procedures by which the public may participate in the formulation of the final determinations.

(f) Documentation of the antidegradation review findings developed, in accordance with Section 3, for the proposed discharge. Where lowering of higher water quality conditions in a receiving water will result, the documentation will include sufficient information and rationale to support the determination of the Commission to allow lower water quality.

2. The Director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets.

Section 10. NAC 445A.241 is hereby amended to read as follows:

NAC 445A.241 Duration and reissuance of permits. ([NRS 445A.425](#), [445A.465](#), [445A.495](#))

1. The duration of permits is fixed and does not exceed 5 years. The expiration date must be recorded on each permit issued. A new application must be filed with the Department to obtain renewal or modification of a permit. Applications for renewal must be filed at least 180 days prior to expiration of the permit.

2. For the reissuance of a permit, the same procedures must be followed as for the initial issuance of a permit. *Reissuance of a permit that maintains existing permitted flow, effluent limitations and other conditions and requirements as the initial permit issuance will be exempt from an antidegradation analysis, as described in Section 3.*

3. A person who holds an expired permit and who has submitted a timely application for renewal of the permit in the manner set forth in subsection 1 may continue to conduct the permitted activity in accordance with the terms and conditions of the expired permit until the Department takes final action on the application unless:

(a) The Department determines that the permittee is not in substantial compliance with the terms and conditions of the expired permit or with a compliance schedule designed to bring the permittee in compliance with the terms and conditions of the expired permit;

(b) The Department, as a result of an action or the failure to act of the permittee, has been unable to take final action on the application on or before the expiration date of the permit; or

(c) The permittee has submitted an application with major deficiencies or has failed to supplement properly the application in a timely manner after being informed of deficiencies.

Section 11. NAC 445A.243 is hereby amended to read as follows:

NAC 445A.243 Establishment of effluent limitation. ([NRS 445A.425](#), [445A.465](#), [445A.500](#)) In establishing an effluent limitation to carry out the policy of this State set forth in [NRS 445A.305](#), consideration must be given to, but is not limited by, the following:

1. The effect of the discharge on the receiving waters and its beneficial use.

2. The need for standards that specify by chemical, physical, biological or other characteristics the extent to which pollution by various substances will not be tolerated.

3. Standards for water quality and effluent limitations promulgated from time to time by the United States Environmental Protection Agency, including the following:

- (a) Effluent limitations under §§ 301 and 302 of the Act, 33 U.S.C. §§ 1311 and 1312.
- (b) Standards of performance for new sources under § 306 of the Act, 33 U.S.C. § 1316.
- (c) Effluent standards, effluent prohibitions and pretreatment standards under § 307 of the Act, 33 U.S.C. § 1317.

(d) Any more stringent limitations, including those:

(1) Necessary to meet standards for water quality and treatment or schedules of compliance, established pursuant to any state law or regulation;

(2) Necessary to meet any other federal law or regulation; or

(3) Required to carry out any applicable standards for water quality, *and the antidegradation policy as described in Section 2.*

Ê Such limitations must include any legally applicable requirements necessary to carry out total maximum daily loads established pursuant to § 303(d) of the Act, 33 U.S.C. § 1303(d), and incorporated in the continuing planning process approved under § 303(e) of the Act, 33 U.S.C. § 1303(e), and any regulations and guidelines issued thereunder.

(e) Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to § 208(b) of the Act.

4. In the application of water quality standards and limitations and other legally applicable requirements pursuant to subsection 3, the Director shall, for each issued NPDES permit, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of mass, except quantitative limitations that are not appropriately expressed in terms of mass, including, without limitation, pH, temperature and radiation.

Section 12. NAC 445A.266 is hereby amended to read as follows:

NAC 445A.266 Issuance of permit; notice of intent to engage in activity; location of facility approved to operate under permit; requirements for discharge. ([NRS 445A.425](#), [445A.465](#), [445A.475](#))

1. A general permit may be issued for:

(a) A discharge;

(b) The reuse or ultimate disposal of treated wastewater and sludge; or

(c) Rolling stock for work in waters of this State, including, but not limited to, dredging or filling, bank stabilization or restoration, channel clearance, construction of irrigation diversions or pipe crossings, and the clearance of vegetation, debris or temporary obstructions.

(d) An antidegradation review analysis of a general permit, pursuant to Section 3, will be conducted at the time the permit is issued or renewed.

2. The Department will process a notice of intent to engage in an activity for which a general permit has been issued pursuant to this section not later than 60 days after the date on which the Department receives the completed notice of intent and the required fees, unless the Administrator of the Division determines that it is in the public interest to hold a public hearing regarding the notice of intent. Upon making such a determination, the Administrator of the Division shall promptly notify the person who submitted the notice of intent that a public hearing will be held regarding the notice of intent.

3. A facility discharging any pollutant into any waters of this State must be located within:

(a) An area designated for water quality planning;

(b) A sewer district or a sewer authority;

(c) The political boundaries of a city or county;

(d) A state or county highway system; or

(e) Any other division or combination of boundaries deemed appropriate by the Director, to be approved to operate under a general permit.

4. Discharges from a facility described in subsection 3 must:

(a) Involve the same or substantially similar types of operations;

(b) Discharge the same types of pollutants or engage in the same types of use or disposal;

- (c) Require the same effluent limitations, operating conditions or standards for reuse or disposal;
- (d) Contain storm water;
- (e) Require the same or similar monitoring; or
- (f) In the opinion of the Director, be more appropriately regulated by a general permit than by an individual permit.

5. If the discharge to be authorized under a general permit will be to an EAW, a demonstration must be made to the Division that the higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value of the EAW will be maintained and protected. The Division may authorize the discharge to an EAW under a general permit or direct the applicant to apply for an individual permit as provided in NAC 445A.269, as necessary.

~~6. 5.7~~ A general permit may not include a facility that holds an individual permit.

Section 13. NAC 445A.298 is hereby amended to read as follows:

NAC 445A.298 Establishment by Director. (NRS 445A.425, 445A.465)

1. The Director shall establish a zone of mixing so that the standards for quality of water for individual parameters determined to be appropriate pursuant to subsection 1 of NAC 445A.297 for the receiving water, but in no case including esthetic and acute toxicity values, may be relaxed within the zone of mixing.

2. In determining the size of a zone of mixing, each application must be reviewed on a case-by-case basis taking into consideration the quality of effluent of wastewater discharged and the nature and condition of the receiving water, including the effects of the effluent or wastewater on the designated or actual beneficial uses of the receiving water, ~~and~~ standards for quality of water *and the antidegradation review analysis as described in Section 3.*

Section 14. NAC 445A.302 is hereby amended to read as follows:

NAC 445A.302 Renewal. (NRS 445A.425, 445A.465)

1. Any zone of mixing may be granted or renewed for periods not exceeding 5 years.

2. Applications for renewal:

(a) Must be made before the expiration of the period concerning the zone of mixing.

(b) May be granted by the Director if the application for renewal has met all of the conditions specified for the immediately preceding zone of mixing granted pursuant to NAC 445A.295 to 445A.302, inclusive, *and satisfies the requirements of the antidegradation review analysis when higher water quality conditions are associated with the zone of mixing.*